



Express Mail No. EV 423 775 610 US  
Attorney Docket No. 2076/US/2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Douglas A. Crawford et al.

Application No. 10/789,579

Filed: February 26, 2004

For: SYSTEM AND METHOD FOR CONTROLLING  
AN EXERCISE APPARATUS

Confirmation No.: 7948

Art Unit: 3764

Examiner: Not Yet Assigned

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUBMISSION OF SUBSTITUTE DECLARATION**  
**FOR PATENT APPLICATION**

Sir:

Enclosed for filing is a substitute Declaration for Patent Application, reflecting the addition of the priority claims to U.S. application Nos. 60/450,789 and 60/451,104 in the above-referenced application, as reflected in the Preliminary Amendment filed with the U.S. Patent and Trademark Office (USPTO) on June 25, 2004, a copy of which is enclosed. This application is a non-provisional application claiming priority to U.S. patent application Nos. 60/450,890; 60/450,789; and 60/451,104. Please substitute the enclosed Declaration for Patent Application for the Declaration for Patent Application previously filed with the Office on June 7, 2004.

It is believed no fee is due for this submission. However, if any fees are due, the Office is hereby authorized to use our Deposit Account No. 04-1415.

Date: 30 July 2004

  
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Enclosures  
4816-5305-47201

**DECLARATION FOR PATENT APPLICATION****DECLARATION:**

As one of the below-named inventors, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "System and Method for Controlling an Exercise Apparatus," which may be identified as Application No. 10/789,579, filed February 26, 2004; also known as Attorney Docket No. 2076/US/2, filed with Express Mail Label No. EV 447 463 112 US. I authorize the assignee, or its agent or representative, to fill in the serial number for this application once it is available.

The persons named as inventors in this application are: Douglas A. Crawford and Bradley J. Smith.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. 1.56, as attached.

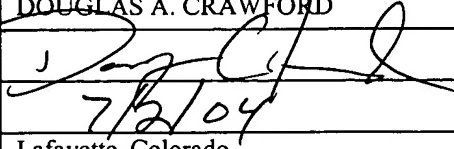
I hereby claim the benefit under 35 U.S.C. 120/365 of the United States patent application listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

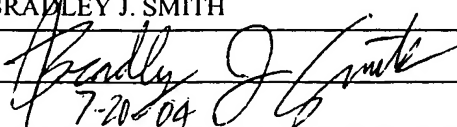
U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)
60/450,890	28 February 2003	Pending on 2/26/2004
60/450,789	28 February 2003	Pending on 2/26/2004
60/451,104	28 February 2003	Pending on 2/26/2004

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor's Full Name:	DOUGLAS A. CRAWFORD
Inventor's Signature:	
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**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.